

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:23-CT-03059-M-RJ

ROBERT JEREMY HAYNES,

Plaintiff,

v.

OFFICER T. RICHARDS, et al.,

Defendants.

ORDER

This cause is before the court on plaintiff's motion for default judgment. Mot. [D.E. 37].  
For the reasons discussed below, the court denies the motion.

Procedural History:

On February 1, 2023, Robert Jeremy Haynes ("plaintiff"), a state inmate proceeding without prepayment of fees, filed *pro se* a complaint under 42 U.S.C. § 1983. [D.E. 1, 6, 9].

On February 28, 2023, the action was transferred to this court. Order [D.E. 3].

On June 13, 2023, the court allowed the action to proceed against Tyler J. Richards and Daniel Deas, see Order [D.E. 11], and issued requests for waiver of service [D.E. 12].

On August 11, 2023, Deas' waiver of service was returned executed, Richards' last known address was provided under seal, and summons issued as to Richards. See [D.E. 19, 20, 21].

On October 5, 2023, summons was returned executed as to Richards. [D.E. 25].

On October 10, 2023, Deas answered the complaint. Answer [D.E. 27].

On November 1, 2023, the court directed Richards to answer the complaint and warned that failure to do so may result in an entry of default and default judgment. Order [D.E. 29].

On November 13, 2023, plaintiff moved for entry of default. See Mot. [D.E. 30].

On December 14, 2023, because Richards had failed to answer in the time allowed by the November 1, 2023, order, the court, *inter alia*, granted plaintiff's motion for entry of default and directed the clerk to enter default against Richards. See Order [D.E. 32]; [D.E. 33].

On December 18, 2023, the court entered a scheduling order. [D.E. 34].

On February 8, 2024, plaintiff filed a motion seeking an extension of time to complete discovery, Mot. [D.E. 36], as well as the instant motion for default judgment as to Richards, see Mot. [D.E. 37], and the court granted the motion to extend time, setting the new discovery deadline as April 17, 2024, and the new dispositive motions deadline as May 17, 2024, see Order [D.E. 38].

#### Discussion:

Although Richards has failed to file responsive pleading, because plaintiff did not serve Richards with his November 13, 2023, motion for entry of default, the court finds good cause to set aside the December 14, 2023, entry of default. See Fed. R. Civ. P. 55(c); cf. Dutan v. Sheet Metal Remodeling, LLC, 48 F. Supp. 3d 860, 867 (E.D. Va. 2014) (finding entry of default appropriate upon a showing that the request for entry of default had been served by certified mail upon the defendant that had failed timely to file responsive pleading).

The court now turns to plaintiff's instant motion for default judgment. Mot. [D.E. 37]. This motion also was not served on Richards. Moreover, because the defendants' prospective liability is closely interrelated, the court, in its discretion, will refrain from issuing a default judgment until the answering defendant addresses the merits of plaintiff's claims to avoid the prospect of inconsistent judgments. See Frow v. De La Vega, 82 U.S. 552, 554 (1872); U. S. for Use of Hudson v. Peerless Ins. Co., 374 F.2d 942, 944-45 (4th Cir. 1967); see also Leighton v. Homesite Ins. Co. of the Midwest, 580 F. Supp. 3d 330, 333 (E.D. Va. 2022).

Conclusion:

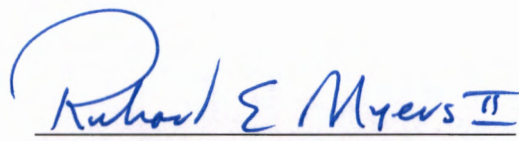
For the reasons discussed above, the court SETS ASIDE the entry of default [D.E. 33] and DENIES WITHOUT PREJUDICE plaintiff's instant motion for default judgment [D.E. 37].

The court further DIRECTS the clerk to update the docket to include Richards' address presently under seal and to send Richards a copy of this order.

The court also DIRECTS Deas, through the North Carolina Attorney General's Office, to serve on Richards a copy of Deas' answer.

Finally, the court ADMONISHES the parties that electronic service is insufficient as to plaintiff and Richards and REMINDS ALL PARTIES that they must serve future filings on each party to the suit. See Fed. R. Civ. P. 5(a), (b); Local Civil Rule 5.1(b)(1), (2).

SO ORDERED this 4<sup>th</sup> day of March, 2024.

  
RICHARD E. MYERS II  
Chief United States District Judge